IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1563

COCA COLA BOTTLING COMPANY
OF PUERTO RICO, INC., et al., *Appellants*
v.
JOSE M. ALONSO-GARCIA, Manager,
STATE INSURANCE FUND OF PUERTO RICO, *Appellee.*

On Appeal from the United States District Court
For the District of Puerto Rico

MOTION TO DISMISS OR AFFIRM

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TO THE HONORABLE COURT:

Now comes appellee José M. Alonso-García and respectfully moves this Honorable Court to dismiss the appeal in the above-entitled case on the grounds that the cause is moot, or to affirm the judgment and order of the Three-Judge Court of the United States District Court for the District of Puerto Rico on the grounds that it is manifest that the questions presented by the appeal are so unsubstantial as not to warrant further argument.

STATEMENT OF THE CASE

On the year 1954 the then Manager of the State Insurance Fund of Puerto Rico adopted the norm of imposing to employers premiums on the basis of maximum annual wages of $5,200.00 per employee.

Fifteen years later, on October 2, 1969, the then Manager of the State Insurance Fund declared inoperative said administrative practice and instructed that from October 1, 1969 said basis of $5,200.00 be eliminated and that the premiums be assessed, imposed and collected in accordance with the total payroll of the salaries, wages and other compensation which the employee may receive. No publicity was given to this new norm and the employers did not have any knowledge of it until the year 1973.

An investigation of the books of the employers revealed that they were not informing in their payroll statements the total of wages and other compensations earned by their employees. Accordingly, in 1973 the Manager of the State Insurance Fund notified the employers with deficiencies consisting of premiums not paid on salaries in excess of $5,200.00 per year. These deficiencies were made retroactive to the period comprised between 1969 to 1973.

The employers (herein appellants) appealed to the Industrial Commission of Puerto Rico pursuant to the provisions of Section 24 of Act No. 45 of April 18, 1935 known as the "Workmen's Accident Compensation Act" (11 L.P.R.A., sec. 25). Pursuant to said provisions, the employers must deposit the contested amounts in order to gain access to the Industrial Commission and litigate whether or not the amounts are due.

While the litigation before the Industrial Commission was in progress, on May 16, 1973 appellants filed in the United States District Court for the District of Puerto Rico a complaint for declaratory and injunctive relief and for designation of a three-judge court. In said action appellants challenged the constitutionality of the procedure established by 11 L.P.R.A., Sec. 25, on the grounds that it denies the employers any "preterminate" hearing on its obligation to pay the contested amounts and constitutes a deprivation of property in violation of the due process clauses of the 5th and 14th Amendments of the Constitution of the United States. It was also alleged that the said Act does not provide for the posting of a bond in lieu of the contested amounts of premiums, and that such amounts are not returned to the employers if they eventually prevail but rather applied to premiums for subsequent years, without payment of interest.

On December 27, 1974, the Industrial Commission of Puerto Rico issued a resolution deciding that appellants were not required to pay premiums on salaries in excess of $5,200.00 per year. (Appendix to Jurisdictional Statements, pages 37a to 79a). The Manager of the State Insurance Fund requested reconsideration and through a Resolution issued on June 18, 1975, the Industrial Commission reversed its prior judgment and determined that employers were required to pay premiums based on the total amount of each employee's salary.[1] (See Appendix to this Motion.) Appellants requested a review to the Supreme Court of Puerto Rico,

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[1] Although the June 18, 1975 resolution is titled "Dissident Resolution", it is actually the majority's resolution since three commissioners agreed on it and only one commissioner dissented.

which on August 21, 1975 agreed to review the judgment of the Industrial Commission.

Meanwhile, on June 5, 1975 a three-judge court was designated in the United States District Court for the District of Puerto Rico pursuant to 28 U.S.C., Sec. 2281. On June 25, 1975 a hearing was held before the Honorable Juan R. Torruella, United States District Judge for the District of Puerto Rico, in regard to an order to show cause why a temporary restraining order should not issue against defendant (herein appellee) pending a final determination by the three-judge court. At that hearing the District Court heard the testimony of Samuel Batista, Actuary of the State Insurance Fund. The case was finally submitted to the three-judge court on or around December 2, 1975.

In the meantime, the Supreme Court of Puerto Rico, on April 7, 1976, decided appellants' claim in regard to the payment of premiums on wages in excess $5,200.00 annually. The Supreme Court determined that the rule established in 1954 by the then Manager of the State Insurance Fund has no effect whatsoever because it is contrary to the clear provisions of the Workmen's Accident Compensation Act which expressly provides that the premiums shall be levied on the basis of the total amount paid by the employer for wages, salaries and other compensation during the previous year. Nevertheless, the Supreme Court remanded the case to the Industrial Commission so as to allow the Manager of the State Insurance Fund to determine again the *rate* which will govern each occupation or industry as of the year 1969. (See Appendix to this Motion.)

Finally, on December 27, 1976, the United States District Court for the District of Puerto Rico filed a

judgment and opinion denying appellants' constitutional challenges arising from the disputes concerning the premiums charged by appellee herein. The District Court held that the case came within the express exceptions sketched in Part VI of *Fuentes* v. *Shevin*, 407 U.S. 67 (1972), and that the collections of premiums here "resemble nothing so much as the collection of taxes, for which *Fuentes* makes an explicit exception". (Appendix to Jurisdictional Statement, page 4 a)

On January 7, 1977, appellants filed a motion to alter or amend judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, requesting a reconsideration of the District Court's statement that the workmen's compensation premiums resemble taxes. On February 8, 1977, the District Court denied the petition for rehearing, stating that it had not decided that the premiums were taxes for purposes of Puerto Rican law or for any other purpose, and that it had "simply held that the governmental interest in collecting these premiums is identical to that in collecting taxes and, for this reason, the *Fuentes* exception applies". (Appendix to Jurisdictional Statement, page 1 a).

ARGUMENT

I

The Cause Appealed Is Moot

Appellants' claim against the State Insurance Fund in regard to the contested premiums not paid on salaries in excess of $5,200.00 annually per employee was finally and definitively adjudged and decided by the Supreme Court of Puerto Rico on April 7, 1976. It is thus apparent that the issues sought to be raised in this appeal about the alleged unconstitutionality of the

Workmen's Accident Compensation Act are moot because there is not a live controversy at this moment. The final adjudication of appellants' claim by the Supreme Court of Puerto Rico put an end to the case or controversy in this lawsuit, for there is no current or continuing prejudicial injury to appellants' proprietary rights, and any decision by this Honorable Court on the questions sought to be raised will have no effect whatsoever on appellants' claim against appellee. See *Indiana Employment Division* v. *Burney,* 409 U.S. 540, 35 L.Ed. 2d 62, 93 S. Ct. 883 (1973); *SEC* v. *Medical Committee for Human Rights,* 404 U.S. 403, 30 L. Ed. 2d 560, 92 S. Ct. 577 (1972); *Sosna* v. *Iowa,* 419 U.S. 393, 42 L. Ed. 2d 532, 95 S. Ct. 553 (1975).

II

The Questions Presented by the Appeal Are So Unsubstantial As Not To Warrant Further Argument

The decision of the District Court is plainly correct. Appellants' assertion that the District Court erred in equating the collection of premiums with the collection of taxes notwithstanding the holding of the Supreme Court of Puerto Rico in *Wirshing* v. *Buscaglia,* 64 P.R.R. 346 (1945) and the decision of the Industrial Commission, is clearly without merit. What *Wirshing* v. *Buscaglia,* supra, actually holds is that premiums on workmen's compensation insurance are not taxes *which can be paid under protest and recovered through an ordinary action* in a local district court pursuant to a local statute providing for the payment of taxes under protest. In *Municipality of Carolina* v. *Caribbean Atlantic Airlines, Inc.,* decided on February 12, 1974, 101 P.R.R. (1974), (Appendix to this Motion), the Supreme Court of Puerto Rico held that premiums collected for the support of the state industrial accident fund are taxes. See also *Esso Standard Oil* v. *P.R.P.A.,* 95 P.R.R. 754 (1968); and *Boyd, James Harrington,* "A Treatise on the Law of Compensation for Injuries to Workmen", Vol. 1, Section 70.

The Workmen's Accident Compensation Act itself considers the premiums as taxes. See 11 L.P.R.A., sec. 20 and 11 L.P.R.A., sec. 25 (Appendix to Jurisdictional Statement, pages 24 a to 25 a).

On the other hand, the Resolution of the Industrial Commission of Puerto Rico of December 27, 1974, invoked by appellants, was vacated and reconsidered by the Commission on June 18, 1975, and in the Resolution issued on reconsideration the Commission expressed that there was no need to decide whether the premiums imposed by the Manager of the State Insurance Fund are taxes. (See Appendix to this Motion).

In any event, it is clear that the District Court did not decide that the premiums are taxes for purposes of Puerto Rican law or for any other purpose. As the District Court stated in the Order on Petition for Rehearing:

> ". . . We simply held that the governmental interest in collecting these premiums is identical to that in collecting taxes and, for this reason, the *Fuentes* exception applies." (Appendix to Jurisdictional Statement, page 1 a).

Appellants rely mainly on this Court's decisions in *Fuentes* v. *Shevin,* 407 U.S. 67 (1972); *North Georgia Finishing* v. *Di-Chem,* 419 U.S. 601 (1975); and *Sniadach* v. *Family Finance Corp.,* 395 U.S. 377 (1969). Unlike the instant case, the decisions cited by appellants

deal with the area of debtor-creditor commercial relationships. In those cases this Court found unconstitutional commercial statutes designed to afford a way for relief to a creditor against a delinquent debtor, in which ex-parte allegations sufficed to invoke State machinery.

The case at bar is fundamentally different from the cases cited by appellants. Here, as the District Court stated, it is a governmental agency which assesses the premiums and its purpose is a public one. There is no doubt that workmen's compensation acts are constitutionally valid as a just and reasonable exercise of the State's police power, by reason of its public interest in the safety, health, lives and welfare of workers. *Madera* v. *Industrial Commission,* 262 U.S. 499 (1923); *Heirs of Rodriguez* v. *Industrial Commission,* 53 P.R.R. 784 (1938); *Cortés* v. *Industrial Commission,* 85 P.R.R. 231 (1962); *Horovitz On Workmen's Compensation,* 1944 Ed., pages 12-13.

In *Fuentes* v. *Shevin,* supra, this Court said at pages 90-92:

> "There are 'extraordinary situations' that justify postponing notice and opportunity for a hearing. Boddie v. Connecticut, 401 U.S. at 379, 28 L.Ed. 2d at 119. These situations, however, must be truly unusual. Only in a few limited situations has this Court allowed outright seizure without opportunity for a prior hearing. First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was

> necessary and justified in the particular instance. Thus, the Court has allowed summary seizure of property to collect the internal revenue of the United States, to meet the needs of a national war effort, to protect against the economic disaster of a bank failure, and to protect the public from misbranded drugs and contaminated food."

In the instant case there is no doubt that the three requisites expressed in *Fuentes* are met. Evidently, the prompt collection of premiums assessed by the Manager of the State Insurance Fund is essential to secure the important governmental and public interest which is the health and welfare of the labor force. Cf. *Calero Toledo* v. *Pearson Yacht Leasing Co.,* 416 U.S. 663 (1974).

On the other hand, the Workmen's Accident Compensation Act provides for a full and prompt hearing before the Industrial Commission and subsequent review by the Supreme Court of Puerto Rico in the case of any employer aggrieved by a decision of the Manager of the State Insurance Fund fixing premiums or rates. See 11 L.P.R.A., Secs. 25 and 12 (App. J.S., pages 24 a and 22 a). As this Court says in *Mitchell* v. *W.T. Grant Co.,* 416 U.S. 600, at page 611:

> ". . . The usual rule has been '[w]here only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate'. Phillips v. Commissioner, 283 U.S. 589, 596-597, 75 L.Ed. 1289, 51 S.Ct. 608 (1931)"

At page 11 of the Jurisdictional Statement appellants assert that *Laing* v. *United States,* 423 U.S. 161, 46 L.Ed. 2d 416 (1976), is authority for the opposite

proposition enunciated in *Phillips* v. *Commissioner*, 283 U.S. 589 (1931), where this Court allowed summary seizure of property to collect the internal revenue of the United States. Appellants' assertion is totally incorrect. In *Laing* v. *United States*, supra, this Court did not address itself to the question whether due process demand that a taxpayer, in a jeopardy assessment situation, be afforded a prompt post-assessment hearing. The Court did not have to decide whether the procedure available violated the Constitution, because it agreed with the taxpayer's construction of the statute. See Note 26 at 46 L. Ed. 2nd 433.

Likewise, appellants wrongly allege that there was no evidence of the State Insurance Fund's fiscal problems. In addition to the study or report submitted by appellee, the District Court heard the testimony of Mr. Samuel Batista, Actuary of the State Insurance Fund. This witness testified that the Fund would lose 11.7 million dollars in premiums in the event that the $5,200.00 payroll limitation be maintained, and that in such event the benefits paid by the Fund would be adversely affected because said benefits come entirely from premium income.

This testimony showed that the State Insurance Fund has only one source of revenue, and that is the amount collected from premiums. A serious financial disability to meet economic obligations would result if this income be delayed, when the financial statements of the Fund show that approximately every dollar coming into the Fund is being spent or obligated in benefits to workers and other operational costs. This factor of societal and financial cost has to be considered as part of the Government's or public interest, when determining the appropriate due process balance. See *Mathews* v. *Eldridge*, 47 L. Ed. 2d 18 (1976); *Boddie* v. *Connecticut*, 401 U.S. 371, 378-379 (1971).

Alcoa Steamship Company v. *Pérez*, 424 F.2d 433 (1970), cited in the Jurisdictional Statement, has nothing to do with the absence of a hearing prior to the collection of premiums by the State Insurance Fund. That case deals only with the right to recovery by an employer of illegally charged premiums, when such an employer is not covered by the Puerto Rico Workmen's Accident Compensation Act.

CONCLUSION

For the reasons above set forth, it is respectfully requested that this appeal be dismissed on the ground that the cause is moot, or that the judgment and order of the District Court be affirmed on the grounds that it is manifest that the questions presented by this appeal are so unsubstantial as not to warrant further argument.

At San Juan, Puerto Rico,

Respectfully submitted.

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APPENDIX

IN THE SUPREME COURT OF PUERTO RICO

Nos. 0-75-340, 0-75-338

Review

COCA COLA BOTTLING CO. OF PUERTO RICO, SEARS ROEBUCK OF P. R., INC., ETC., *et al.*, *Appellants*

v.

INDUSTRIAL COMMISSION OF PUERTO RICO, ETC., *Respondent*

Judgment

San Juan, Puerto Rico, April 7, 1976

Despite the fact that art. 25 of the Workmen's Accident Compensation Act in its second paragraph (11 L.P.R.A. § 26) provides insofar as pertinent that the Manager of the State Insurance Fund is authorized and empowered to assess and levy on "every regular or permanent employer of workmen and employees affected by this Act, and he is hereby ordered to assess and levy premiums determined in accordance with the preceding article, on the total amount of wages paid by said employer to workmen and employees . . ." and in its fifth paragraph it repeats that "[t]he premiums for regular or permanent employers shall be levied as soon as the payroll return hereinafter referred to is received in the office of the Manager, the basis therefore, subject to investigation and revision by the Manager, to be the total amount paid by the employer for wages, salaries, and other compensation paid to the laborers employed by him during the previous year . . ."; in 1954 the Manager of the State Insurance Fund set up a rule fixing an annual ceiling of $5,200 per employee on all salaries, wages, or individual compensation subject to the payment of premiums.

Fifteen years later, on October 2, 1969, the then Manager of the Fund, issued an internal memorandum abrogating

the rule set up in the year 1954; in said memorandum he stated that for the purposes of levying and collecting premiums the total amount of the payroll earned by or paid to all the employees, officers, or workmen of any employer would be taken into consideration, thus eliminating the $5,200 ceiling.

No publicity was given to this new rule and it was not until the middle of 1973 that the employers, appellants herein, learned about its existence.

When the employers' account books were investigated in the year 1973 it appeared, as it was to be expected—since no publicity had been given to the memorandum of October 2, 1969—that the former were not informing the Fund, in the payroll return, the total of wages, salaries, and other compensation paid to its employees; consequently in 1973 the Manager notified them a deficiency which was retroactive to the year 1969.

The employers appealed to the Industrial Commission, which upheld the determination of the Manager of the Fund.[1]

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[1] The case was submitted to the Industrial Commission in the following stipulation:

"1—That according to the instructions given through an internal communication on August 6, 1954, by the then Manager of the Fund, Guillermo Atiles Moreu, the administrative practice followed for over 15 years was that of levying premiums on a maximum basis of $5,200 of the wages per employee.

"2—That through internal memorandum No. 147-69 dated October 2, 1969, Mr. Ramón A. Rivera Rivera, Manager of the Fund at that time, abrogated said administrative practice and ordered that as of October 1, 1969, the $5,200 basis was to be eliminated and the premiums were to be assessed, levied, and collected according to the total amount of the payroll of the salaries, wages, and other compensation paid to the employees.

"3—That it was not until the middle of 1973, that the employers learned about internal memorandum No. 147-69, to which we have made reference.

"4—That no publicity was given to said memorandum through our news media."

Nobody argues that the Workmen's Accident Compensation Act expressly provides that "[t]he premiums for regular or permanent employers shall be levied as soon as the payroll return is received in the Office of the Manager . . . the basis therefore . . . to be the total amount paid by the employer for wages, salaries, and other compensation paid to the laborers employed by him during the previous year . . ." Consequently, the rule established in 1954 is contrary to law. The fact that it remained in existence for a considerable period of time, does not give validity to the same. A set of rules or an administrative practice which is contrary to the clear provisions of a statute, has no effect whatsoever. In *Ex parte Irizarry*, 66 P.R.R. 634, 638 (1946) we said "It is an elemental rule of law that when the legislature delegates to a board or person powers to promulgate rules, the latter, to be valid, cannot be in conflict with the norms established in the law." And in *Rosario Mercado* v. *San Juan Racing Ass'n*, 94 P.R.R. 605, 614 (1967) we stated that "The text of the law should never be understood as modified or substituted by the regulations." See also, *A.P.I.A.U. Inc.* v. *Sec. of the Treasury*, 100 P.R.R. 171, 177 (1971); *County of Marin* v. *United States*, 356 P.S. 412-420 (1958); *United States* v. *Mo. Pac. R. Co.*, 278 U.S. 269, 280 (1929); *Dixon* v. *United States*, 381 U.S. 68-74 (1965); *Manhattan General Equipment* v. *Commissioner*, 297 U.S. 129 (1936).

The Act also orders to "fix for each class of occupation or industry the lowest possible premium rates, including minimum rates, consistent with the establishment of a solvent state insurance fund and the creation of a reasonable surplus." Article 23 (11 L.P.R.A. § 24). It is evident that pursuant to the express provisions of the act, the Manager

could set up a new rule, which would have the effect of increasing the total amount of the payroll over which the premium for each occupation or industry is levied and, consequently, maintain a low premium rate,[2] complying with the express mandate of the act.

Before June 1 of each year, the Manager of the Fund shall prepare a schedule of classifications according to the occupations or industries and fix for each class of occupation or industry the lowest premium rates possible. In complying with the legislative mandate of fixing the lowest premium rates possible compatible with the solvency of the fund and the creation of a reasonable surplus, the higher the amount of the payroll for each occupation or industry, taking into consideration other actuarial factors, the lower the premium rate could result. See *Quilinchini* v. *Industrial Commission*, 93 P.R.R. 473-477 (1966). Upon changing the rule in effect since 1954 and requiring the return of the total amount of the payroll, there would necessarily have to be a new determination of the premium rate. This being the case, the proper action would be for the Manager of the Fund to determine again the rate which will govern each occupation or industry as of the year 1969. Pursuant to the provisions of art. 24 of the Workmen's Accident Compensation Act, 11 L.P.R.A. § 25, if they feel aggrieved with the Manager's decision, employers may petition the Commission for its review.

The resolution appealed from is reversed and the case is remanded to the Industrial Commission.

It was so decreed and ordered by the Court and certified by the Chief Clerk. Mr. Chief Justice, Trías Monge, disqualified himself.

(Subscription omitted in printing)

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[2] Rate is the premium unit for each $100 in the payroll.

THE COMMONWEALTH OF PUERTO RICO
INDUSTRIAL COMMISSION OF PUERTO RICO
SAN JUAN, PUERTO RICO

Case No. IC—73-5-3957

73-5-3956

Case No. S.I.F.
Policy No. 3002
Policy No. 2284

COCA COLA BOTTLING CO. OF P.R., SEARS ROEBUCK DE P.R. INC. on their behalf and on behalf of those employers similarly situated in Puerto Rico,

vs.

STATE INSURANCE FUND, *Insurer*.

Re: Revision of Premiums
(Reconsideration)

(Majority's Resolution)

Dissident Resolution

I reconsider my position as to the concurrence of the resolution in the case of caption dated December 27, 1974, notified on January 10, 1974, in which the arbitrator was the distinguished brother attorney Miguel A. Lopez Rivera, Esq., being it my belief that the refund does not proceed but instead the payment of the premiums by the employers in the total of the payroll earned or paid to all officers, employees and workers for the period comprised between the insurance-years 1969-70, 1970-71, 1971-72 and 1972-73, for the following reasons.*

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* The resolution of December 27, 1974 limited its extent to 1972-73 for all legal purposes.

Article 25 of the Workers' Compensation Law, second paragraph (11 LPRA, Sec. 26), provides in its pertinent part that power and faculty are vested upon the Administrator to appraise and impose to "*any employer*, regular or permanent, of workers and employees affected by this Law, and he is *ordered* to appraise and impose annual *quotas* determined pursuant to the above mentioned Article *on the total amount of the wages paid by said employer* to workers and employees . . ." (emphasis supplied). See also, Paragraph 6th of said Article 25 wherein it is confirmed that the imposition of the premiums' collection shall be made on the total sum of the payroll. Said Paragraph also provides that: "The quotas shall be imposed to regular or permanent employers as soon as the payroll declaration mentioned further on, is received in the Offices of the Administrator, *taking as a basis, subject to investigation and revision by the Administrator, the total amount of wages, salaries* and other gratuities paid by the employer to workers employed by him during the previous year, to which said workers had or may have had the right to the benefits of this Law." (underlining ours).

We also have other clear and specific dispositions in the law as to the matter in controversy, on Paragraph First of Article 27, wherein it is repeated once more the legislative intention that the premium shall be imposed on the total of the wages and other gratuities. In said Paragraph it is expressed that: ". . . and the total amount of the wages paid to said workers."

The preceding legal provisions are clear and specific in their command for the Administrator of the State Insurance Fund to impose and collect premiums taking as a basis the total of the payroll paid by the employers.

Notwithstanding those clear dispositions of law, on August 6, 1954, the then Administrator of the State Insurance Fund, Guillermo Atiles Moreu, Esq., addressed an interoffice communication to the actuary-comptroller of the In-

surance Division of the State Insurance Fund, to which he made reference as an amendment to "Clause B, Section 6 of the Rules and Regulations of the Agency (Handbook of Rules of Classifications and Type of Insurance for Work's Accident Compensation), through which it was established, taking into consideration the salary levels prevailing in Puerto Rico and the limited benefits provided by law (must be understood and interpreted) in cases of accident by that date—August 6, 1954—the norm to fix a maximum limit on the salaries, wages or individual salaries to the premium payment of $5,200 per employee, instead of the total basis of the payrolls paid by the employers in violation of the clear dispositions of law.

From that date and until the year 1969, the Administrator of the State Insurance Fund established the administrative practice or administrative instructions, which for all purposes constitute the same thing, accepting the employers' payroll declarations through which the salaries, wages and other gratuities were limited to $5,200 annually. The payroll declarations were accepted, the premiums were collected on that amount and the corresponding insurance policies issued to the employers.

On October 2, 1969, the then Administrator of the State Insurance Fund, Mr. Roman A. Rivera Rivera, circulated a Memorandum to the Director of the Insurance Bureau, the Head of the Interventions Division, the Head of the Insurance Policy Division, and to the Regional Heads of Policy Liquidations of said Agency, through which he recognizes the administrative practice or administrative instructions of August 6, 1954, above mentioned, and considers that said instructions or administrative practices were never incorporated to the Rules and Regulations of the State Insurance Fund, thereby directing the personnel mentioned in the memorandum to leave without effect from October 2, 1969, the extension of the benefits of Clause (b), Section 6 of the Rule X, to workers and/or employees re-

ceiving an annual salary in excess of $5,200, pointing out further that for the purposes of the imposition and collection of premiums it shall be considered the total of the payroll earned or paid to all officers, employees and workers of any corporation, partnership or natural or juridical person without limitation, that is, eliminating the maximum level of $5,200, maintaining said level for the corporation's executive officers until the new Rules and Regulations are in force.

After the Inter-Office Memorandum No. 147-69 of the Administrator of the State Insurance Fund, the books of the employers are investigated resulting from said investigation that these were not informing to the Fund, in their respective payroll declarations, the total of the wages, salaries and other gratuities earned by their employees. When the collection of additional premiums result from said interventions, the Administrator sends to the employers the Notice for the Collection of Worker's Insurance Premiums, collecting said additional premiums. From the stipulations of the parties* it appears that it is on the middle of the year 1973 that the State Insurance Fund collects for the first time from the employers the premiums for salaries over $5,200, in a retroactive manner for years prior to 1969.

In our opinion, the controversy is limited to determine whether the Administrator of the State Insurance Fund can collect retroactive premiums to all employers over the salaries of $5,200 for years prior to 1973 and specifically for the period comprised between 1954 to 1969, or from 1973 to 1969, when specific administrative instructions are given to the officers intervening with the insurance policies, to the effect that for purposes of imposition and collection

* From Stipulation 3 it appears that during the course of the hearing prior to the public hearing of December 4, the employers did not have any knowledge of the Inter-Office Memorandum #146-69 until the middle of 1973.

of premiums it shall be considered the total of the payroll earned or paid to all officers, employees and workers of any partnership or natural or juridical person without limitation. It was specifically advised that said instructions commenced enforceable on October 1st., 1969.

It is necessary to establish some concepts that in my opinion must be clarified in our Resolution of December 27, 1974, notified on January 10, 1975, for the purpose of establishing our position.

There is no controversy as to what has been discussed in said Resolution on the constitutionality of the "Work's Accident Compensation Law" and all other references to the procedures established by said Law. (Part F.—Discussion and analysis of the law and the theories applicable—Pages 6-10 of the Resolution).

I do not concur with the applicability of the doctrine of the "interpretative rule" for the purposes of determining the validity of the interpretation of the inter-office memorandum of August 6, 1954 issued by the then Administrator of the State Insurance Fund, Attorney Atiles Moreu. In the same resolution it is established the premise that for an "interpretative rule" to be valid it is necessary that some criteria and factors concur (Page 12) and specifically that its applicability must only be effective when there are dubious terms in the law. We do not think we can utilize said rules based on the precise concepts used in the "Work's Accident Compensation Law", of "total amount of the wages paid", the "total payroll payment", "total payroll of activities", "wages paid", "the total amount of the wages", "salaries and other gratuities", and the "total amount of the wages paid", since the same do not require definition. The memorandum of 1954 did not have the extent to define any term but only to limit the payment to $5,200 of the salaries of the employees and workers of any corporation, partnership or natural or juridical person, which was null before the clear dispositions of the Articles

25 and 27 of the Law herein mentioned. There is no interpretation or regulation when the same are not in accordance with the statute. It is settled law that all acts executed in contravention of the law are null. (Article 4 of our Civil Code, 31 LPRA, Section 4). Even assuming that it were a regulation, which is not the case, the legal text can never be understood as modified or altered by the regulations. (*Asociación Puertorriqueña de Importadores deAutomoviles Usados* v. *Sec. de Hacienda*, 100 D.P.R. 173).

In the disposition of our judicial system and the jurisprudence of our Supreme Court, there is sufficient judicial basis to determine the non applicable argument of the theory "interpretative rule" to clarify clear and specific terms requiring no definition nor clarification. (See Article 14 of our Civil Code and cases cited in the work of Attorney Elfren Bernier "Appeal and Interpretation of the Laws of Puerto Rico").

Yet, if we want to make use of authors and precedents of other jurisdictions, we have citations of the distinguished and recognized author Davis in his work "Administrative Law Treatise", saying at Section 5.09:

> "If an interpretative rule is merely an interpretation of a statute, and if the meaning of the statute has been there from the time of it original enactment, then no problem of a retroactive interpretative rule can arise for either the interpretative rule expresses the true meaning of the statute or it does not; if it does, then that is what the statute has always meant and the rule has not changed the law retroactively; if it does not then it does not matter whether the rule can be made retroactive, for the rule is invalid in that it is inconsistent with the statute".
>
> Even when rules are legislative, the Supreme Court has pretended that the formulation of the rules does not involve creative law making. The Court has unrealistically declared: "*The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulation to that end is not the power to make law* for no such power can be delegate by Congress—but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, *but operates to create a rule out of harmony with the statute, is a mere nullity.*" (emphasis supplied).

To sustain our point of view that the clear statutory provisions can not be altered, see *U.S.* v. *Missouri*, 278 U.S. 269 and Corpus Juris Secundum, Volume 73, Sec. 69, Page 397, where it reads:

> "*An administrative interpretation out of harmony and contrary to the express provision of a statute cannot be given weight. To do so would in effect amend the statute. Construction may not be substituted for legislation.*" (underlining ours).
>
> Administrative interpretations cannot alter provisions which are clear and explicit and will not overcome a statute which is plain and unambiguous. A statute cannot be altered or amended by the administrative interpretation, and administrative agencies have no power to interpret a statute so as to read words out of it, to rewrite it so as to change its purpose, to extend its coverage beyond it terms, or to make subject to control that which was never the subject of legislative control." (emphasis supplied).

Now, recognizing that the so called administrative practice of 1954 was null and ineffective, the same was in operations until 1969 when express orders were given for purposes that in the collection of the premiums the total of the payroll earned or paid be considered. From that date is that the employers are bound to pay for the totality of the wages and the Administrator of the State Insurance Fund to collect, in a retroactive manner, the premiums that have

not been paid corresponding to the insurance-years 1969-70 (October 1, 1969), 1970-71, 1971-72 and 1972-73.

We do not think that for the fact that the deficiencies of additional premiums on the years mentioned above, in conformity with the instructions contained in Memorandum 147-69 of October 2, 1969, effective October 1, 1969, were notified in the year 1973, to have by itself a legal impediment for their collection under the doctrine of estoppel.

We recognize the doctrine in the case of *Silva* v. *Comision Industrial,* 91 D.P.R. 891 and the applicability of the estoppel theory to governmental agencies. (*Garcia Colon* v. *Secretario de Hacienda,* 99 D.P.R. 779 and the author Davis in "Administrative Law Treatise" (1958 ed.) pages 541-532); only when rights and justice require so. But here we are before a situation wherein the actions of a public officer are not within the scope of the express, restricted and specific faculties of law and that the government can not be responsible for said incorrect and unauthorized acts. In this case there exists reasons of public order—solvency of a Fund—permitting the opposition of orders made contrary to law. See *Marxuach* v. *Diaz,* decided by our Supreme Court on March 11, 1975. We do not think that the case of *Philip Morris* v. *Tribunal Superior,* decided by the Honorable Supreme Court of Puerto Rico (0-74-171) on January 8, 1975, is applicable to the facts of this case. Both cases can be distinguished.

The judicial and procedural technicalities have to be applied to situations where justice require so. The philosophy and basis of the Work's Accident Compensation Law and the public interest resting on it—the welfare and protection of those citizens suffering injuries during the course of their employment—can not, under those technicalities framed in a legal nullity, endanger those funds that guarantee the phylosophy and law postulates.

Based on the foregoing, it is my opinion that the retroactivity prior to 1969-70 does not proceed, as per our reso-

lution of December 27, 1974, notified on January 10, 1975, in which the Arbitrator was the distinguished brother attorney Miguel A. Lopez Rivera, Esq., and that it proceeds the payment of the totality of the payrolls for the premiums corresponding to insurance-years 1969-70, 1970-71, 1971-72 and 1972-73.

Based on the foregoing facts, there is no need to decide if the "premiums or quotas" imposed by the Administrator of the Insurance Funds are contributions.

We want to establish our position in this case that the same is applicable for all legal purposes to those employers that have come before this institution having no effect for those employers that have not come before us.

In San Juan, Puerto Rico, June 18, 1975.

FERNANDO MARTINEZ VELEZ
Arbitrator

(Did not Intervene)
MIGUEL A. GUSMAN SOTO
Associate Commissioner

HERMINIO CONCEPCION
DE GRACIA
Associate Commissioner

(Dissident Vote)
MIGUEL A. LOPEZ RIVERA
Associate Commissioner

EDWIN RAMOS YORDAN
Associate Commissioner

(Certification Omitted in Printing)

IN THE SUPREME COURT OF PUERTO RICO

No. R-70-134

Review

MUNICIPALITY OF CAROLINA, *Plaintiff-appellee*

v.

CARIBBEAN ATLANTIC AIRLINES, INC., *Defendant-appellant*

Mr. JUSTICE CADILLA GINORIO delivered the opinion of the Court.

San Juan, Puerto Rico, February 12, 1974

The Caribbean Atlantic Airlines, Inc. (Caribair) challenges the collection by the Municipality of Carolina of a municipal license tax amounting to $5,125.50 for the fiscal year 1967-68, on the basis of its volume of business during the calendar year 1966.

The Municipality of Carolina levied the aforementioned license tax fees on the airline under the authority of the License Tax Act then in force which granted it power to levy said taxes on every person, firm, association, partnership, corporation or other form whatsoever of commercial or industiral organization engaged in any of the businesses or industries mentioned in said act.[1] In determining municipal revenues, the act establishes, among others, those obtained through commercial and industrial licenses taxes,[2] according to Act No. 26 approved on March 28, 1914, as amended, §§ 621 to 639 of this Title 21. That same § 1479(d) of the aforementioned Title 21 expressly states that the power of the municipalities to levy license taxes is not

[1] See 21 L.P.R.A. §§ 621 and 622.

[2] 21 L.P.R.A. § 1479 (d).

limited to the businesses or industries specified under groups "A", "B" and "C" in § 623 of 21 L.P.R.A., but that said license taxes may be levied also ". . . on such other commercial and industrial establishments as may be provided by the municipal assembly."

A new License Tax Act was approved on June 12, 1971 (Act No. 27 of that year), 21 L.P.R.A. (Cum. Supp. 1973) § 641 *et seq.*, Equity, p. 326, which repealed the former act; and under group "C", it left intact the power of the municipalities to levy license taxes on airlines, when it provided that "[i]n addition to the establishments, businesses, or industries enumerated herein, the municipal assembly is authorized to include and classify within Groups A, B and C, by ordinance or resolution, any other establishments, businesses or industry not enumerated; . . ."

In this case the municipal license tax was levied on the grounds of § 641b of 21 L.P.R.A., ". . . on the basis of the volume of the business for the year immediately preceding . . ."

There existing a difference of opinion between the Municipality and Caribair, since the latter considered that the collection of the amount fixed for license tax did not lie, since under the provisions of the tax exemption provided in Act No. 135 of May 9, 1945, as amended by Act No. 77 of June 20, 1966, 13 L.P.R.A. (Cum. Supp.) § 194, it was exempt from the payment of said license tax, because the latter constituted some kind of tax; and the Municipality considered that the letter of Act No. 135, as amended, is clear and the tax exemption is limited to taxes on personal and real property; and it does not cover municipal license taxes; both parties appeared before the San Juan Part of the Superior Court of Puerto Rico with a petition or request for Declaratory Judgment, where, after raising said difference of opinion with regard to the construction of the said Tax Exemption Act and stipulating the facts set forth, they requested said Court to issue a statement of the ". . .

rights, status or other juridical relations derived therefrom and any order it may deem proper with regard to the determination of whether it is proper for the Municipality of Carolina to collect from Caribair the municipal license tax under the situation described hereinafter."[3]

On April 9, 1970, the San Juan Part of the Superior Court rendered judgment holding that Caribair was bound to pay the aforementioned municipal license taxes.

Caribair appeals before this Court alleging in synthesis that the interpretation made by the Superior Court of Act No. 135 of 1945 is literal, inconsistent with the totality of the Act and with the purpose underlying the tax exemption.

Act No. 135 of May 9, 1945, as amended, 13 L.P.R.A. (Cum. Supp., p. 155) § 194, provides the following in its pertinent part:

"§ 194. Air carriers

"(a) Every natural or artificial person engaged as a public carrier in air transportation service is hereby exempted, as to such service, from the payment of all commonwealth, local and municipal taxes, of whatever name or nature, on all real or personal property now owned or hereafter acquired thereby, including all taxes or excises on equipment or supplies, but not including excise on fuels nor the impost that Act No. 82 of June 26, 1959, authorized the Ports Authority to levy on all aviation gasoline, all fuel products for use and consumption in the propelling of air transportation vehicles and all mixtures of gasoline with any combustible product for use and consumption in the propelling of air transportation vehicles, destined to be consumed in air voyages between Puerto Rico and other places or in air voyages within the territorial limits of Puerto Rico.

[3] The facts and legal provisions set forth above.

"Likewise the planes and the equipment related thereto, leased and owned by a public carrier engaged in the air transportation service are hereby exempt from all property taxes, provided it is established to the satisfaction of the Secretary of the Treasury that such property is being used for such purpose.

"(b) The exemptions provided for in subsection (a) of this section shall in no case be construed as including or covering income tax or premiums payable under the Workmen's Accident Compensation Act, sections 1-42 of Title 11.

"(c) . . ."

At the threshold we will say that when the Lawmaker wanted to exempt entities or businesses exempted from paying taxes over their real or personal property from paying municipal license taxes, he has expressly determined it. Let's take, for example, the provisions of the Puerto Rico Industrial Incentive Act of 1963 (13 L.P.R.A. (Cum. Supp. 1973, p. 178) § 252, subdivision (c), which provides the following:

"§ 252. *Exemptions*

"(a) . . .

"(b) . . .

"(c) Exempted business *shall not be subject to license fees, excise, or other municipal taxes* levied by any ordinance of any municipality, for the periods stated below . . ." (Italics ours.)[4]

And also the provision of subdivision (b) of § 252 of Title 13 of L.P.R.A. (Cum. Supp. 1973, p. 177); and in the

[4] See also subdivision (j)(1), (j)(2), and (j)(3) of said § 252, *supra*.

same sense, in subdivision (b) of § 241 of Title 13, *supra* at p. 166.

A contrarius sensus, if the exemption of subdivision (c) did not exist, the businesses exempted from the payment of taxes over their real or personal property, would have to pay the *license taxes*, excises and other taxes levied by any municipality.

We maintain that a municipal license, in our opinion, is not a tax, but accepting, for the purpose of deciding the question involved in this case, that a municipal license is a tax, we face the problem that the license in controversy here was levied on the basis of the *volume of business*, a power which is granted to the municipalities by the License Tax Act, and not on Caribair's real or personal property. The letter of the Act is clear and precise. The exemption from the payment of all kinds of commonwealth, local and municipal taxes, of whatever name or nature "*. . . on all real or personal property now owned or hereafter acquired thereby. . . .*" (Italics ours.)

We do not think there is any error whatsoever in the syntaxis of the provision, nor that any ambiguity whatsoever is created by including the aforementioned phrase with regard to the fact that the exemption is granted on the real or personal property. There is no such "*literal interpretation*" as Caribair alleges. When the letter of the law is clear and free from all ambiguity, it should not be disregarded under the pretext of fulfilling the spirit thereof. Civil Code, 1930, art. 14; 31 L.P.R.A. § 14. There is no ambiguity whatsoever in the provision of law, when it clearly establishes that the exemption is with regard to the carrier's real or personal property.

Provision (b) of § 194, *supra*, clarifies that neither the income tax nor the premiums payable under the Workmen's Accident Compensation Act are included in the exemption. It is natural that it has been thus clarified in order to avoid

the interpretation to the effect that the carrier was exempt from paying those taxes, because, in the first place: (1) income tax is levied upon the *net income* of every individual, corporation or partnership. (13 L.P.R.A. (Cum. Supp. 1973, p. 10) §§ 3011 and 3012.)

"*Ingreso*" (income) is the wealth which comes into one's possession; and "*ingresar*" (to come in) means the coming in of something, *specially money*.[5] (Italics ours.)

Since the tax is levied upon the net income received during the year; *and that money constitutes personal property* of the taxpayer, the Lawmaker deemed it proper to exclude that tax from the exemption; and (2) substantially the same thing happens with regard to the premiums for workmen's compensation. It has been held that contributions collected for the support of the state industrial accident fund, constitute "taxes".[6]

In *State Industrial Accident Commission* v. *Aebi*, 177 Or. 361; 162 P. 2d 513; 161 A.L.R. 211, it is held that an exaction imposed by the Workmen's Compensation Act upon employers is nonetheless a tax because it applies to employers engaged in occupations declared to be hazardous by the Act.[7]

Said case of Aebi, *supra*, cites approvingly, the definition of the term "tax" as applicable to contributions required of employers under the Wisconsin Unemployment Act,

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[5] *Vox: Dic. Gen. Ilustrado de la Lengua Española*; Edit. Biblograph, S.A. Barcelona, 1970.

[6] "Contributions exacted for the support of a state industrial accident fund have been held *to constitute taxes.*" (Italics ours.) 58 Am. Jur. § 553, p. 921; *op. cit.* at p. 922.

[7] ". . . an exaction imposed by the workmen's compensation statute upon employers is nonetheless a tax because it applies to such employers as are engaged in occupations declared by the statute to be hazardous." (See case of Aebi, *supra*.)

given by the eminent former Chief Justice Hughes of the Supreme Court of the United States, while sitting as Associate Justice, which definition reads as follows:

> "A tax is an enforced contribution for the payment of public expenses. It is laid by some rule of apportionment according to which the persons or property taxed share the public burden, and whether taxation operates upon all within the state, or upon those of a given class or locality, its essential nature is the same."[8]

The tax levied on the employer is based on the amount in dollars and cents of the current payroll of the wages paid to all his workmen and employees. 11 L.P.R.A. § 20. That money, the amount of the payroll, partakes of the nature of a personal property; and since it is *a tax on the personal property* of the employer, the Lawmaker, necessarily, had to express clearly that the tax exemption granted to Caribair did not include that tax.

The Lawmaker specifically excluded from the exemption: (1) the excises on fuel; and (2) the impost of two (2) cents per gallon of gasoline which the Act of June 26, 1959 authorized the Legislature to levy on all aviation gasoline. In our opinion, those two exemptions lack importance, to support the opinion to the effect that Caribair is exempt from the payment of the municipal license tax challenged. Let us see:

Act No. 135 approved on May 9, 1945 (Sess. Laws of that year, p. 456) provides the following:

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[8] (Mr. Justice Hughes in *Houck* v. *Little River Drainage District*, 239 U.S. 254, 36 S. Ct. 58; *In re Oshkosh Foundry Co.*, 28 Fed. Supp. 412, 414; and also by the Federal District Judge in *Aebi, supra*).

* EDITOR'S NOTE: We omit the citation included in this footnote because it appears above as part of the text of the opinion.

> "Section 1. Every natural or artificial person engaged as a public carrier in international air transportation service is exempted, as to such services, from the payment of all insular, local, and municipal taxes, whatever its name or nature, *on all of the real or personal property* which he may now own or may hereafter acquire, including all taxes or excises on fuels, lubricants, equipment, or materials.
>
> "Section 2. The exemptions provided for in Section 1 shall in no case be construed as including or covering income tax or premiums payable under the Workmen's Accident Compensation Act." (Italics ours.)

This Act originally expressly included also the air carrier's fuels, lubricants, equipment or materials as personal exempt property.

This Act was amended, and its text in force, in its pertinent part, is that appearing at pages 3 and 4 of this opinion (13 L.P.R.A. (Cum. Supp., p. 155) § 194); and contrary to the original version of 1945, *supra*, which expressly included in the exemption all the taxes or excises on fuels, lubricants, equipment or materials, this new Act does not include in the exemption the ". . . excise on fuels nor the impost that Act No. 82 of June 26, 1949, authorized the Ports Authority to levy on all aviation gasoline, all fuel products for use and consumption in the propelling of air transportation vehicles and all mixtures of gasoline with any combustible product for use and consumption in the propelling of air transportation vehicles, destined to be consumed in air voyages between Puerto Rico and other places or in air voyages within the territorial limits of Puerto Rico."

The excises on fuels were established by virtue of the provisions of Act No. 21, approved on January 20, 1956 (Excise Act of Puerto Rico, 13 L.P.R.A. § 4030). Such excises constituted a tax levied on all fuels, which had and

have the nature of a personal property. But that tax was *suspended* by the provisions of art. 1 of Act No. 82, approved on June 26, 1959 (Sess. Laws of that year, p. 217; 13 L.P.R.A. § 4030 (note in the History)), "... if the Ports Authority *levies, in lieu of said tax, an impost of two cents,* on each gallon or fraction of a gallon of said products and collects it from the suppliers thereof operating in the airports of Puerto Rico." (Italics ours.) The term "supplier", as defined in the Act itself means, any natural or artificial person engaged in the business of supplying the above-mentioned products, and it shall also mean the consumers of said products in case they may import them directly.

Upon *suspending* the tax levied on the fuels, which constitute personal property, and substituting it by the two cents *impost* which the Legislature authorized the Ports Authority to levy for each gallon or fraction of gallon of said products, undoubtedly the Legislature deemed it proper to expressly state that that substitute impost of two cents should not be considered as another tax, since it was not a tax, but an "impost" in order to provide the Ports Authority with its own resources independent from the taxing power of the State, for the financing of capital improvements. The Legislature did not have the benefit of the judicial interpretation given by this Court to the aforementioned Act in the case of *Esso Standard Oil* v. *P.R.P.A.*, 95 P.R.R. 754 (1968) (Ramírez Bages) where we stated that for the purpose of providing the Authority with its own revenue it was authorized *to levy an impost so characterized to distinguish it from the tax which was suspended* since the taxes are levied for the sole purpose of producing revenues, and in that case, the impost did not seek that purpose, but to produce income to a public instrumentality for the necessary and adequate financing of its aims and purposes. That case of Esso, *supra,* shows that there existed the possibility of alleging that the aforementioned "impost was a tax; since in that case it was alleged that

it was a tax like the one it substituted; and that, therefore, as the intervenor Carribean Atlantic Airlines, Inc. maintained there, the exemption which had been granted to it included the "impost" in question; this Court said in said case:

> "Summarizing, from the foregoing it is evident that the impost, which the Legislature authorized appellee to collect, is actually a fee for services and use of facilities and not a tax like the one it substituted, ..." (*Esso, supra.*)

Therefore, we understand that the Legislature wanted to avoid doubts, and stated that the aforementioned impost of two cents was not included in the exemption granted to Caribair.

We have repeatedly held that tax exemptions are derogations of the power of a state and that they must not extend beyond the express and exact terms of the statute granting them and that every doubt must be resolved against exemption from taxation. (*The Texas Co.* v. *Tax Court; Descartes, Int.*, 82 P.R.R. 129, 154 (1961), *cf. American Nat. Bldg.* v. *City of Baltimore,* 224 A.2d 883 Md. 1966).)

The expressed, specific and exact terms of the statute granting the exemption, involved herein, clearly express that the exemption granted is on the carrier's *personal or real property;* and the license tax challenged is not a tax on the carrier's personal or real property, as we have set forth above.

For the reasons stated, judgment is rendered affirming the judgment of the Superior Court, San Juan Part, of April 9, 1970.

Mr. Justice Torres Rigual concurs in the result; and Mr. Justice Rigau, Mr. Justice Dávila, and Mr. Justice Díaz Cruz, dissented.

IN THE SUPREME COURT OF PUERTO RICO

(Caption Omitted in Printing)

MR. JUSTICE DIAZ CRUZ, with whom MR. JUSTICE RIGAU and MR. JUSTICE DAVILA concur, dissenting.

San Juan, Puerto Rico, February 12, 1974

A local airline (Caribair) appeals from a judgment of the Superior Court, San Juan Part, which rules that the letter of Act No. 135 of May 9, 1945, as amended (13 L.P.R.A. § 194) does not exempt it from the payment of municipal license taxes to the Municipality of Carolina; insofar as pertinent said Act reads:

"§ 194. Air carriers

"(a) Every natural or artificial person engaged as a public carrier in air transportation service is hereby exempted, as to such service, from the payment of all commonwealth, local and municipal taxes, of whatever name or nature, on all real or personal property now owned or hereafter acquired thereby, including all taxes or excises on equipment or supplies, ..."

The opinion of the majority affirms the judgment appealed from on the grounds that the exemption is "granted . . . on the carrier's personal or real property; and the license tax challenged is not a tax on the carrier's personal or real property." It reaches this conclusion saying that the license tax is levied on the "volume of business" (21 L.P.R.A. (Cum. Supp. 1973) § 64lb) concept which cannot be classified as personal or real property. Could there be a volume of business if there is no personal or real property invested in the commercial traffic and in the industrial development? The volume of business is not extracted as hydrogen from the air. It is nothing more than the product or fruit of the goods introduced in the market and is therefore

a figure inseparable from the property generating it. The literal interpretation[1] defeats the well-known purpose of the legislation implementing the Economic Development program in our country. If tax exemption is perhaps the greatest incentive designated for the development of the country, how are we going to apply strict rules of construction which were acceptable during a time where it was more important to collect taxes than to create employments and develop wealth through the stimulation of the private enterprise?

The "volume of business" is not a figure detached from the exempt operation; it represents income obtained through capital (property) invested in industrial activity. Tax exemption seeks to promote and create not only new and additional sources of employment in industrial operations but to maintain them in operation in order to cut down unemployment until it is eliminated. The intent of the exemption in question is to effect a greatly needed social and economic purpose for the well-being of the community. If income is derived from activities which in the normal operation of a business tend to carry out the purpose of the legislature and which constitute the proper and adequate activities to reach such purpose, and which were foreseen as may be reasonably determined from the provisions of the statute under consideration, such income falls within the ambit of the exemption.

Proctor Mfg. Corp. v. *Sec. of the Treasury*, 91 P.R.R. 806, 814 (1965) (Ramírez Bages, J.).

"[1, 2] With the foregoing in mind, it is easy to understand that the industrial tax exemptions granted by the Government of Puerto Rico should not be inter-

[1] The courts should not follow the already discredited practice of defeating the purposes of the statutes by giving undue weight to the rules of interpretation of the same. *Alvarez & Pascual* v. *Sec. of the Treasury*, 84 P.R.R. 463, 471 (1962) (Rigau, J.).

preted as the former tax exemptions which were privileges, for which reason their restrictive interpretation was beneficial to the public interest. On the contrary, the *industrial* tax exemptions should be interpreted in consonance with their creative purpose. It is in this way alone that the legislative intent will be accomplished and, furthermore, that faithful and reasonable interpretation is the beneficial interpretation to the public interest. The industrial tax exemption is not a grace, in the old sense of the phrase, conferred by the Government of Puerto Rico, but it is an instrument utilized in Puerto Rico to promote industrial development and productive investment, all for the final goal of offering to the inhabitants of the country a civilized, material, and spiritual life. Said tax exemptions are a realistic and effective tool in the strife of the country to eliminate the 'subhuman' conditions which still exist in certain areas." *Textile Dye Works, Inc.* v. *Sec. of Treasury*, 95 P.R.R. 692, 697 (1968) (Rigau, J.).

In accepting only for the sake of argument that a municipal license is a tax, the opinion ignores that the lawmaker classified it as a tax in the Municipal Law in providing the following:

> "§ 1173. Duties
>
> "The municipal assembly shall have, among others, the following special duties, subject to the other provisions of this subtitle:
>
> . . . .
>
> "(6) The levying of reasonable *taxes* within the jurisdictional limits of the municipality; Provided, That for the purpose of the application of the industrial and commercial license tax act enacted by the Legislature of Puerto Rico on March 28, 1914, as amended, sections 621-639 of this title, the municipal assembly is hereby authorized to include through ordinance or

> resolution, any industrial or business establishments or agencies not enumerated in such sections." (21 L.P.R.A. § 1173, sub. 6.) (Italics ours.)

The license tax levied by Carolina affects and encumbers the personal and real property of appellant and cuts down the exemption granted through the action of the Legislature. The action of the Municipality cannot prevail.

The judgment should be reversed recognizing the exemption of law.

(Certificate Omitted in Printing)